

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELAN MICROELECTRONICS CORPORATION,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No.: C 09-01531 RS (PSG)

ORDER DENYING PLAINTIFF ELAN MICROELECTRONICS CORPORATION'S MOTION TO SHORTEN TIME

(Docket No. 343)

17 Plaintiff Elan Microelectronics Corporation ("Elan") moves to shorten time on its motion to
18 compel discovery related to Apple iOS applications for the accused products. Apple, Inc. ("Apple")
19 opposes the motion. Having reviewed the papers and considered the arguments of counsel, Elan's
20 motion to shorten time is DENIED.

21 Elan states that Apple refuses to produce any financial data for the iOS applications that
22 operate on accused products. Elan argues that the discovery sought is relevant because, under
23 *Uniloc USA, Inc. v. Microsoft Corp.*,¹ it needs to compare the financial performance of iOS
24 applications that make use of the multifinger input features covered by Elan's asserted patent to
25 those that do not. In support of its motion to shorten time, Elan argues that all fact discovery must
26 be completed by August 12, 2011 and Elan's expert report on damages is due on September 9, 2011.
27 On a regular 35-day hearing schedule, the earliest date that Elan's motion to compel could be heard
28

¹ 632 F.3d 1292, 1318 (Fed. Cir. 2011).

1 is August 23, 2011, only three weeks before the deadline to disclose its expert report on damages.
2 Elan also notes that its discovery requests implicate a Rule 30(b)(6) deposition that includes topics
3 on Apple's iOS application financial data.

4 Apple opposes the motion on shortened time on the grounds that Elan has failed to show
5 substantial harm or prejudice if its motion to compel is heard on a regular briefing schedule. Apple
6 notes that notwithstanding that the action was originally filed two years ago, Elan waited until April
7 12, 2011 to serve Apple with its discovery responses related to iOS apps. After Apple served
8 objections on May 12, 2011, Elan waited until June 10, 2011 to follow up. Apple argues that Elan
9 was not diligent in seeking the discovery and any prejudice is of Elan's own making.²

10 Civ. L.R. 6-3 requires that a motion to shorten time "identif[y] the substantial harm or
11 prejudice that would occur if the court did not change time." Here, Elan has not shown substantial
12 harm or prejudice that would occur if its motion is not heard earlier than August 23, 2011, or that
13 would justify the understandable frustrations of others in the court's motion queue who would
14 necessarily get bumped. Accordingly, Elan's motion to shorten time is denied.

15 **IT IS SO ORDERED.**

16 Dated: July 18, 2011

17 
18 PAUL S. GREWAL
19 United States Magistrate Judge
20
21
22
23
24
25
26

27
28 ² While not in any way commenting on the merits of Elan's underlying motion, the court
notes that Apple's argument suggests that it would have no problem producing the data requested on
an expedited basis, if compelled to do so.